



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 20, 1994

Honorable Ann W. Richards
Governor
State of Texas
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

Letter Opinion No. 94-058

Re: Authority of municipal police to
enforce truancy laws, and related
questions (ID# 24829)

Dear Governor Richards:

You ask various questions about the laws pertaining to truancy.¹ Section 21.032, Education Code, requires children between ages six and seventeen to attend public school. Exemptions from the compulsory attendance requirement are set out in section 21.033. *See also* § 21.035 (providing for the excusing of certain absences).

Section 4.25 of the code provides that in the event that a "parent or person standing in parental relation² . . . fails to require . . . [a] child to attend school as required . . . it shall be the duty of the proper attendance officer to warn . . . that attendance must be immediately required." If, after warning, the parent "intentionally, knowingly, recklessly, or with criminal negligence" fails to require such attendance, he commits an offense, and section 4.25 requires the "attendance officer" to file a complaint against him in the proper justice, county, or municipal court.

Section 4.251, newly added in 1993, makes it a class C misdemeanor for a nonexempt child to "fail[] to attend school for 10 or more days or parts of days in a six-month period or three or more days or parts of days in a four-week period" without a valid excuse. The offense "may be prosecuted in . . . justice court."

In addition, Family Code section 51.03 provides that a child's unexcused absence from school for "10 or more days or parts of days in a six-month period or three or more days or parts of days in a four-week period" without parental consent constitutes "conduct

¹School attendance was made compulsory in Texas in 1915 in an act which made a parent's continued failure to require a child to attend school a misdemeanor and provided for the commitment "to a suitable training school" of persistently recalcitrant children. Acts 1915, 34th Leg., ch. 49.

²For the sake of brevity, we will hereinafter refer to a "parent or person standing in parental relation" as simply a "parent."

indicating a need for supervision" within the jurisdiction of the juvenile court. The juvenile court may waive jurisdiction and transfer the matter to justice court. *Id.* § 54.021.

Your first question is whether city police have authority to enforce the truancy laws. Education Code sections 21.036 and 21.037 provide for the election of "school attendance officers" in certain county and independent school districts. Section 21.039 empowers school attendance officers, *inter alia*, to "enforce the provisions of the compulsory attendance law," to "file a complaint" against a parent under section 4.25 or a child under section 4.251, or to refer a child to the proper court for truancy within the definition of "conduct indicating a need for supervision" under Family Code section 51.03. *See supra*. Section 21.038 of the Education Code provides:

In those counties and independent school districts where no attendance officer has been elected, the duties of attendance officers shall devolve upon the school superintendents and peace officers of the counties and districts, but no additional compensation may be paid for the services.

We note, too, however, that Family Code section 52.01, amended in 1993, authorizes "a law enforcement officer" to take a child into custody "if there are reasonable grounds to believe that the child has engaged in . . . conduct indicating a need for supervision." Acts 1993, 73d Leg., ch. 115. (Again, Family Code section 51.03 provides that a child's unexcused absence from school for "10 or more days or parts of days in a six-month period or three or more days or parts of days in a four-week period" without parental consent constitutes "conduct indicating a need for supervision.")

The provisions presently appearing in section 21.038 were initially adopted in 1915 in a bill that also included the predecessor provisions of section 4.25 and of the other compulsory attendance provisions now in sections 21.032 *et seq.* Acts 1915, 34th Leg., ch. 49. At that time school districts were not themselves authorized to employ peace officers. Thus, the reference in section 21.038 to "peace officers of the . . . districts" must refer to peace officers of other governmental units whose jurisdictions include the territory of school districts.

We read section 21.038 as authorizing municipal police officers of a municipality in which school district territory is included to enforce the truancy laws in such district, "where no attendance officer has been elected." In addition, however, we believe that the specific provisions of section 52.01, revisited by the legislature in 1993, generally provide law enforcement officers, including city police, with authority to take a child into custody for truancy within the definition of "conduct indicating a need for supervision" even if there is an attendance officer serving the district.

You also ask, with regard to responsibility for a child after he has been taken into custody for truancy: "[I]s the school required by law to take a juvenile who has been

returned to them? If not, or, if the truant is a repeat offender, does the juvenile probation department have any requirement placed upon it." Once a child has been properly admitted to school, the only legal occasion we find for the school's refusing the child's continued attendance is where there are grounds for expulsion or suspension. Section 21.301(j) of the Education Code specifically provides that "[a] student may not be suspended for being truant." Section 21.3011, in providing for the grounds for expulsion, does not include truancy. Thus, truancy in itself, even repeated offenses, would not be grounds for a school's refusing to take back a child after he had been taken into custody for truancy. On the other hand, the child's return to school would not affect the duties of a juvenile probation department to which the child may have been referred for truancy constituting conduct indicating a need for supervision under section 51.03(b), Family Code. *See* Educ. Code § 4.25(a).

With regard to penalties that may be imposed in connection with truancy, you ask whether "judges . . . [may] sentence juveniles and/or their parents to work programs that are community service related" and whether "financial penalties can be imposed upon legal guardians of the affected juveniles." Section 4.25(a) of the Education Code, in providing that the continued failure of a parent to require a child to attend school constitutes an offense, specifically provides that, "[i]f the court probates the sentence, the court may require the defendant to render personal services to a charitable or educational institution as a condition of probation." Thus, a court may require a parent found to have committed the offense set out in section 4.25 to perform community service related work programs within the scope of the above-quoted provision of that section.

Similarly, a juvenile court in a proceeding against a juvenile for violation of section 4.251, may, we think, impose reasonable community service work on a juvenile. Section 54.04 of the Family Code, in providing for a disposition hearing in a judicial proceeding against a juvenile, specifically authorizes a juvenile court to "place the child on probation on such reasonable and lawful terms as the court may determine." Also, we note that where a case has been transferred under section 54.021 from a juvenile to a justice court and the child found to have been truant within the definition of "conduct indicating need for supervision" in section 51.03(b)(2), section 54.021 specifically authorizes the justice court to require that "the child complete reasonable community service requirements." *Id.* § 54.021(d)(4).

With regard to the imposition of "financial penalties . . . upon legal guardians of the affected juvenile," section 4.25 sets out the penalties for the offense under that section for a parent's continued failure to require a child to attend school. In 1993, two separate bills, Senate Bill 7 and House Bill 681, amended the punishment provisions of section 4.25. *See* Acts 1993, 73d Leg., chs. 347, 358.³ Senate Bill 7 amended section 4.25 by

³We note that House Bill 1372, 1993, also amended portions of section 4.25, but not the penalty provisions. Acts 1993, 73rd. Leg., ch. 930.

doubling the amounts in the ranges of fines previously provided for so that portion of the section, as amended, read: "An offense under this section is punishable by a fine of not less than \$10 nor more than \$50 for the first offense, not less than \$20 nor more than \$100 for the second offense, and not less than \$50 nor more than \$200 for a subsequent offense." House Bill 681, in contrast, deleted the pre-existing provisions of section 4.25 for specific ranges of fines, and substituted the provision that an offense under the section is "a Class C misdemeanor." Penal Code section 12.23 provides that a class C misdemeanor is punishable "by a fine not to exceed \$500."

House Bill 681 was finally adopted on May 18, 1993, and Senate Bill 7 on May 28. Where two bills from the same session make conflicting provisions--as we believe these two bills do with regard to punishment for the offense under section 4.25--the latest expression of legislative intent, here Senate Bill 7, prevails. *See, e.g.*, Attorney General Opinion JM-914 (1988). In our opinion, the offense provided for in Education Code 4.25 of a parent's continued failure to require a child's school attendance, is punishable "by a fine of not less than \$10 nor more than \$50 for the first offense, not less than \$20 nor more than \$100 for the second offense, and not less than \$50 nor more than \$200 for a subsequent offense."

S U M M A R Y

Municipal police of a municipality in which school district territory is included have authority to enforce the truancy laws in such district, "where no attendance officer has been elected." In addition, law enforcement officers, including city police, have authority to take a child into custody for truancy within the definition of "conduct indicating a need for supervision" under Family Code section 51.03(b)(2) even if there is an attendance officer serving the district.

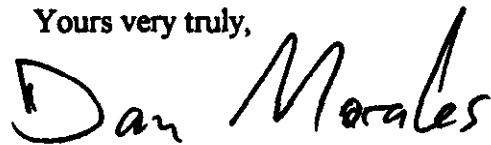
Truancy in itself would not be grounds for a school's refusing to re-admit a child after he had been taken into custody for truancy.

A court may require a parent found to have committed the offense set out in Education Code section 4.25, repeated failure to require a child to attend school, to render personal services to a charitable or educational institution as a condition of probation. A juvenile court in a proceeding against a juvenile for violation of Education Code section 4.251, for the offense of failure to attend school for the periods set out therein, may impose reasonable community service work on a juvenile. Where a case has been transferred under section Family Code 54.021 from a juvenile to a justice court and the child found to have been truant within the definition of "conduct indicating need for supervision" in section

51.03(b)(2), the justice court may require that "the child complete reasonable community service requirements." *Id.* § 54.021(d)(4).

The offense provided for in Education Code 4.25, a parent's continued failure to require a child's school attendance, is punishable, pursuant to Education Code section 4.25, as amended by Senate Bill 7, 73d Legislature, by a fine of not less than \$10 nor more than \$50 for the first offense, not less than \$20 nor more than \$100 for the second offense, and not less than \$50 nor more than \$200 for a subsequent offense.

Yours very truly,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, flowing style. The first name "Dan" is written in a larger, more prominent script, and the last name "Morales" follows it in a similar but slightly smaller script.

Dan Morales
Attorney General